

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 20, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DON MACALLISTER,

Plaintiff,

v.

ANDY JOHNSTON; and JOHNSTON
ENGINEERING PLLC,

Defendants.

No. 2:23-cv-00210-MKD

ORDER DISMISSING ACTION

ECF No. 1

By Order entered October 16, 2023, the Court advised Plaintiff, who is proceeding in this case *pro se*, of the deficiencies of his Complaint and directed him to amend or voluntarily dismiss the Complaint within 60 days. ECF No. 5. Plaintiff did not comply with that Order and has filed nothing further in this action.

Plaintiff filed this *pro se* Complaint on July 25, 2023. ECF No. 1. Plaintiff alleges the Defendants “unlawfully seized Plaintiff’s business documents and property worth over \$75,000,” and that the Defendants demanded money for the return of the seized property. *Id.* at 4. Plaintiff seeks the “[i]mmediate release of seized property and prohibition of further unlawful actions,” compensatory

ORDER TO AMEND OR VOLUNTARILY DISMISS COMPLAINT - 1

1 damages, and punitive damages. *Id.* at 7. Plaintiff's Complaint references an
2 alleged text message from Defendant on June 29, 2022, that Plaintiff claims
3 demonstrates Defendant seized Plaintiff's property, refused to pursue legal
4 methods to return the property, and demanded money in return for the property.
5 *Id.* at 5. By separate Order, the Court has granted Plaintiff leave to proceed *in*
6 *forma pauperis*. ECF No. 3. Proof of Service has not been filed.

7 As discussed in the prior Order, Plaintiff has failed to state a claim upon
8 which relief may be granted. Plaintiff alleged Defendants violated criminal laws,
9 however, no private right of action exists to enforce criminal statutes. Plaintiff
10 alleges Defendants violated his Fourth Amendment rights, but Defendants are not
11 appropriate defendants for a Section 1983 claim. As such, Plaintiff also has not
12 provided a basis for federal question jurisdiction. Although granted the
13 opportunity to amend or voluntarily dismiss, Plaintiff has filed nothing further in
14 this action. The Court cautioned Plaintiff that if he failed to amend within 60 days
15 as directed, the Court would dismiss the Complaint for failure to state a claim
16 under 28 U.S.C. § 1915(e)(2).

17 For the reasons set forth above, and in the Order to Amend or Voluntarily
18 Dismiss Complaint, ECF No. 5, this action is dismissed with prejudice for failure
19 to state a claim against Defendants upon which relief may be granted.
20

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Complaint, **ECF No. 1**, is **DISMISSED** with prejudice.

3 2. Plaintiff shall provide notice of the dismissal to any and all Defendants
4 he served with a copy of the Complaint and Summons.

5 3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of
6 this Order would not be taken in good faith and would lack any arguable basis in law
7 or fact.

8 **IT IS SO ORDERED.** The District Court Executive is directed to file this
9 Order, enter judgment, provide copies to counsel and *pro se* Plaintiff, and **CLOSE**
10 the file.

11
12 DATED December 20, 2023.

13 *s/Mary K. Dimke*
14 MARY K. DIMKE
15 UNITED STATES DISTRICT JUDGE
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**MOTION TO VOLUNTARILY
DISMISS COMPLAINT**

Plaintiff DON MACALLISTER requests the Court grant his Motion to Voluntarily Dismiss Complaint under Federal Rule of Civil Procedure 41(a). Plaintiff is proceeding *pro se*. Plaintiff will provide notice of the dismissal to Defendant.

DATED this _____ day of _____ 2023.

DON MACALLISTER